

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

UNITED STATES OF AMERICA,

Plaintiff, : Case No. 3:05-cr-156

-vs- Chief Magistrate Judge Michael R. Merz

ROBERT D. ANDREWS,

Defendant.

DECISION AND ORDER

This case came on for hearing on March 22, 2006, on Defendant's Motion to Suppress Evidence and Statements (Doc. No. 13). It was agreed between the parties that the search of Defendant's person was made without a search warrant. Therefore the burden of proving that the search was made pursuant to a valid exception to the warrant requirement of the Fourth Amendment was on the Plaintiff. Plaintiff presented the testimony of Sergeant Tschippert who confronted Defendant with a number of white pills which Sgt. Tschippert learned had been taken from Plaintiff. The content of any statements from Sgt. Watson (who apparently conducted the search) to Sgt. Tschippert were excluded as hearsay. Because the United States could not present admissible testimony showing that the pills were lawfully seized from Defendant, the pills are suppressed and may not be admitted in evidence.

Given this ruling, the Court need not further consider whether Defendant's statements to Sgt. Tschippert need be suppressed. In the absence of the physical evidence, the chemical composition of which is an essential element of the offense charged, the Government cannot prove its case

against Defendant beyond a reasonable doubt and thus Plaintiff's admission of possession of the pills is insufficient.

The Motion to Suppress is granted. The case is ordered dismissed as the United States plainly cannot proceed without the physical evidence.

March 22, 2006.

s/ Michael R. Merz
Chief United States Magistrate Judge